

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

THOMAS CHARLES SCOTT,

Petitioner,

v.

LANDON BIRD,

Respondent.

Case No. 2:23-cv-00936-JDP (HC)

ORDER AND FINDINGS AND
RECOMMENDATIONS

Petitioner, a state prisoner proceeding without counsel, seeks a writ of habeas corpus under 28 U.S.C. § 2254. After reviewing the petition, I find that it is successive and, thus, impermissible. Petitioner acknowledges that he previously attacked the relevant conviction in a separate case in this district. *See Scott v. Sherman*, No. 2:16-cv-01957-JAM-KJN. In that case, Judge Newman recommended that the petition be denied, *id.* at ECF No. 27, and those recommendations were adopted by Judge Mendez, *id.* at ECF No. 35. A successive petition may be considered only if the Ninth Circuit Court of Appeals grants its authorization. *See Cooper v. Calderon*, 274 F.3d 1270, 1274 (9th Cir. 2001) (“When the AEDPA is in play, the district court may not, in the absence of proper authorization from the court of appeals, consider a second or successive habeas application.”) (quoting *Libby v. Magnusson*, 177 F.3d 43, 45 (1st Cir. 1999)). Here, petitioner acknowledges that he requested such authorization from the Ninth Circuit and his request was denied. ECF No. 1 at 12-13. Notwithstanding that denial, he now makes various

1 arguments about newly discovered evidence and miscarriages of justice that he argues must be
2 addressed. *Id.* at 15. Those arguments do not allow him to circumvent the requirement that the
3 Ninth Circuit authorize any successive petition. *See* 28 USCS § 2244(3)(A).

4 Accordingly, it is ORDERED that the Clerk of Court assign a district judge to this action.

5 Further it is RECOMMENDED that the petition, ECF No. 1, be DISMISSED as
6 successive.

7 These findings and recommendations are submitted to the United States District Judge
8 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days of
9 service of these findings and recommendations, any party may file written objections with the
10 court and serve a copy on all parties. Such document should be captioned “Objections to
11 Magistrate Judge’s Findings and Recommendations.” Any response shall be served and filed
12 within fourteen days of service of the objections. The parties are advised that failure to file
13 objections within the specified time may waive the right to appeal the District Court’s
14 order. *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th
15 Cir. 1991).

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17 IT IS SO ORDERED.

18 Dated: September 19, 2023

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20 JEREMY D. PETERSON
21 UNITED STATES MAGISTRATE JUDGE
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